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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

17 N.Z., R.M., B.L., S.M., and A.L.,  
18 individually and on behalf of themselves  
and all others similarly situated,

19 || Plaintiffs,  
v.

20 FENIX INTERNATIONAL LIMITED,  
21 FENIX INTERNET LLC, BOSS  
22 BADDIES LLC, MOXY  
23 MANAGEMENT, UNRULY AGENCY  
24 LLC (also d/b/a DYSRPT AGENCY),  
BEHAVE AGENCY LLC, A.S.H.  
AGENCY, CONTENT X, INC., VERGE  
AGENCY, INC., AND ELITE  
CREATORS LLC.

## Defendants.

Case No. 8:24-cv-01655-FWS-SSC

Judge: Hon. Fred W. Slaughter

**DEFENDANT ELITE  
CREATORS INC.'S JOINDER  
TO SPECIALLY APPEARING  
DEFENDANTS FENIX  
INTERNATIONAL  
LIMITED'S AND FENIX  
INTERNET LLC'S MOTION  
FOR PARTIAL  
RECONSIDERATION OR  
ALTERNATIVELY  
CERTIFICATION OF AN  
INTERLOCUTORY APPEAL**

Complaint Served: 8/05/2024

Defendant Elite Creators LLC (“**Defendant**” or “**Elite Creators**”), by and through counsel and pursuant to Civil Local Rule 7-18, Rule 54(b) of the Federal Rules of Civil Procedure, and 28 U.S.C. § 1292(b), submits this Joinder to the Motion for Partial Reconsideration or Alternatively Certification of an Interlocutory Appeal (the “**Motion to Reconsider**”) (EFC No. 147, filed July 31, 2025) filed by Specially Appearing Defendants Fenix International Limited and Fenix Internet LLC (the “**Fenix Defendants**”). Elite Creators joins in full the arguments and relief sought in the Fenix Defendants’ Motion to Reconsider and incorporates by reference the points and authorities set forth therein, as permitted by applicable law.

## **ARGUMENT**

Forum selection clauses are presumptively valid and “should be honored ‘absent some compelling and countervailing reason.’” *Waters v. Advent Prod. Dev., Inc.*, No. 07CV2089BTMLSP, 2008 WL 7683231, at \*7 (S.D. Cal. June 26, 2008) (quoting *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 12 (1972)). “The party challenging the clause bears a ‘heavy burden of proof’ and must ‘clearly show that enforcement would be unreasonable and unjust, or that the clause was invalid for such reasons as fraud or overreaching.’” *Murphy v. Schneider Nat'l, Inc.*, 362 F.3d 1133, 1140 (9th Cir. 2004) (quoting *Bremen*, 407 U.S. at 15, 17.)

Courts in the Ninth Circuit also recognize that a forum selection clause may, in appropriate circumstances, apply to non-signatory defendants whose conduct is closely related to the contractual relationship. For example, in *Manetti-Farrow, Inc. v. Gucci America, Inc.*, the Ninth Circuit affirmed the district court's conclusion that "the alleged conduct of the non-parties is so closely related to the contractual relationship that the forum selection clause applies to all defendants." 858 F.2d 509, 514 n.5 (9th Cir. 1988).

Building on this principle, the Ninth Circuit has held that “where the alleged conduct of the nonparties is closely related to the contractual relationship, ‘a range of transaction participants, parties and non-parties, should benefit from and be

1 subject to forum selection clauses.”” Holland Am. Line Inc. v. Wärtsilä N. Am., Inc.,  
2 485 F.3d 450, 456 (9th Cir. 2007) (quoting Manetti-Farrow, 858 F.2d at 514 n.5).

3 Federal district courts within the Circuit have applied this doctrine to bind  
4 non-signatories who were owners, officers, or closely affiliated with the contracting  
5 party. For example, in Comerica Bank v. Whitehall Specialties, Inc., the court held  
6 that individual defendants could be bound by a forum selection clause despite not  
7 signing the contract, because they were “closely related to the contractual  
8 relationship” at issue. 352 F. Supp. 2d 1077, 1082 n.6 (C.D. Cal. 2004). Similarly,  
9 in Waters, the court applied a forum selection clause to non-signatory defendants  
10 whose alleged conduct was closely intertwined with the contract. 2008 WL 7683231,  
11 at \*7.

12 **I. The Forum Selection Clause in the OnlyFans Terms of Service is  
13 Enforceable in Favor of Elite Creators.**

14 Given this well-established precedent, the forum selection clause in OnlyFans’  
15 Terms of Service is enforceable in favor of Elite Creators because Plaintiffs’ claims  
16 against it are closely related to the contractual relationship governed by those terms.  
17 Plaintiffs’ claims against Elite Creators arise directly from their use of the OnlyFans  
18 platform and the conduct of content creators on that platform—matters that fall  
19 squarely within the scope of the governing Terms of Service.

20 The Terms of Service include the following forum selection clause:

21 If you are a consumer resident outside of the United  
22 Kingdom or the European Union, any claim which you  
23 have or which we have arising out of or in connection with  
24 your agreement with us or your use of OnlyFans  
25 (including, in both cases, non-contractual disputes or  
26 claims) must be brought in the courts of England and  
27 Wales.

28 ECF No. 60-1, Exh. A ¶ 16(a).)

1 Plaintiffs allege they used OnlyFans to view and purchase content from  
2 content creators and that they were misled into doing so based on the purported  
3 chatter scams that were allegedly devised, managed, or executed by third-party  
4 agencies such as Elite Creators. They claim that Elite Creators and other agency  
5 defendants engaged in fraudulent marketing, pricing, and messaging tactics—all of  
6 which occurred through the OnlyFans platform and relied on the platform’s features  
7 and functions.

8 Plaintiffs do not allege that Elite Creators operated independently of  
9 OnlyFans, communicated with Plaintiffs outside the platform, or obtained any direct  
10 payments from them. Rather, the theory of liability against Elite Creators is entirely  
11 dependent on Plaintiffs’ use of OnlyFans and their contractual relationship with the  
12 Fenix Defendants. The factual and legal basis for the claims against Elite Creators  
13 is thus inseparable from the conduct governed by the Terms of Service.

14 Elite Creators is entitled to enforce the forum selection clause because the  
15 claims against it are so intimately bound up with Plaintiffs’ agreement with the Fenix  
16 Defendants that enforcement is not only appropriate but compelled under Ninth  
17 Circuit precedent. *See Holland Am. Line*, 485 F.3d at 456 (“[A] non-party may  
18 enforce a forum selection clause if the non-party is ‘closely related to the contractual  
19 relationship’ between the contracting parties.”).

20 Because Plaintiffs’ claims against Elite Creators are factually and legally  
21 dependent on their use of the OnlyFans platform and fall within the forum selection  
22 clause’s broad scope, the Court should enforce the forum selection clause in favor  
23 of Elite Creators.

24 **II. This Court Has Already Found That the Forum Selection Clause  
25 Covers Plaintiffs’ Claims.**

26 This Court has already determined that the forum selection clause contained in  
27 the OnlyFans Terms of Service governs the claims asserted in this action, including  
28 the claims brought against Elite Creators. Specifically, the Court found that “the

1 broad scope of the forum selection [clause] covers Plaintiffs' claims." (*Order*  
2 *Granting in Part and Denying in Part* *Defs.' Mot. to Dismiss for Forum Non*  
3 *Conveniens* at 7, ECF No. 117, filed Apr. 9, 2025.) The Court explained that  
4 "Plaintiffs allege that Defendants and Agency Defendants engaged in various  
5 fraudulent practices and disseminated confidential and private information without  
6 Plaintiffs' consent with operating the OnlyFans website or creating content." *Id.*  
7 Further, the Court noted that "Plaintiffs' alleged injuries from this scheme all stem  
8 from Plaintiffs' use of the OnlyFans website, which is governed by the Terms of  
9 Service and Privacy Policy[.]" *Id.*

10 This finding is dispositive of whether the forum selection clause is broad  
11 enough to encompass the claims now asserted against Elite Creators. In many  
12 regards, Plaintiffs' allegations against Elite Creators mirror those asserted against the  
13 Fenix Defendants and the other Agency Defendants, including claims based on  
14 alleged misuse of private content and conduct occurring on or in connection with the  
15 OnlyFans platform. Because the Court has already held that such claims are within  
16 the scope of the clause, there is no reasonable basis to carve out Elite Creators from  
17 that ruling.

18 The Court's prior determination also underscores the integral role of the Terms  
19 of Service in governing the relationship between Plaintiffs and the OnlyFans  
20 platform. Plaintiffs cannot avoid the effect of the forum selection clause simply by  
21 naming additional defendants or labeling their claims as tort-based. *See Manetti-*  
22 *Farrow*, 858 F.2d at 514 ("[F]orum selection clauses can be equally applicable to  
23 contractual and tort causes of action.") Where, as here, the alleged injuries arise  
24 directly from Plaintiffs' use of the OnlyFans website and its associated contractual  
25 terms, the forum selection clause must be enforced consistent with the Court's prior  
26 ruling.

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1                   **III. Enforcement Would Promote Judicial Economy and Avoid**  
2                   **Inconsistent Judgments.**

3                   Enforcing the forum selection clause in favor of Elite Creators not only aligns  
4                   with applicable legal precedent but also serves important interests in judicial  
5                   efficiency and consistency. Plaintiffs' claims against Elite Creators are premised on  
6                   the same factual allegations and legal theories as most of their claims against the  
7                   Fenix Defendants, whose conduct is governed by OnlyFans' Terms of Service.  
8                   Allowing the claims to proceed against Elite Creators in this forum—while those  
9                   against the Fenix Defendants are subject to dismissal or transfer under the forum  
10                  selection clause—would risk inconsistent rulings on the same issues of law and fact  
11                  and lead to duplicative litigation in multiple jurisdictions.

12                  This concern is particularly acute given the Court's prior determination that  
13                  the forum selection clause in OnlyFans' Terms of Service broadly applies to  
14                  Plaintiffs' claims. Because those claims stem from Plaintiffs' use of the OnlyFans  
15                  platform and the conduct of individuals and entities allegedly acting in concert,  
16                  fragmenting the litigation would undermine the orderly resolution of the dispute and  
17                  impose unnecessary burdens on both the parties and the judiciary.

18                  For these reasons, enforcing the forum selection clause as to Elite Creators  
19                  would conserve judicial resources, avoid inconsistent judgments, and serve the  
20                  interests of justice.

21                   **CONCLUSION**

22                  For the foregoing reasons, and for those set forth in Motion to Reconsider filed  
23                  by the Fenix Defendants, Defendant Elite Creators respectfully requests that the  
24                  Court grant the motion in its entirety as to Elite Creators and either reconsider its  
25                  prior ruling or certify the issue for interlocutory appeal pursuant to 28 U.S.C.  
26                  § 1292(b).

1 Dated: August 14, 2025

Respectfully submitted,

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